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Right of peoples to self-determination

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Report of the Secretary-General

Summary

In its resolution 68/153, the General Assembly requested the Secretary-General to report to the Assembly at its sixty-ninth session on the universal realization of the right of peoples to self-determination. The present report is submitted in accordance with that request.

The report outlines the relevant jurisprudence of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights on the treaty-based human rights norms relating to the realization of the right of peoples to self-determination. It also provides a summary of the developments relating to the consideration by the Human Rights Council of the subject matter, including by its special procedures. The report further summarizes relevant information on the right to self-determination as contained in the report of the Secretary-General to the Security Council on the situation concerning Western Sahara.

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I. Introduction

1. The General Assembly, in its resolution 68/153, reaffirmed the importance of the universal realization of the right of peoples to self-determination for the effective guarantee and observance of human rights. The Assembly welcomed the progressive exercise of the right to self-determination by peoples under colonial, foreign or alien occupation and their emergence into sovereign statehood and independence.

2. The present report is submitted in accordance with paragraph 5 of resolution 68/153, in which the General Assembly requested the Human Rights Council to continue to give special attention to violations of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation; and with paragraph 6, in which the Assembly requested the Secretary-General to report on the question at its sixty-ninth session.

3. The report provides a summary of the main developments relating to the realization of the right to self-determination within the framework of the activities of the United Nations human rights mechanisms since the submission of the last report (A/68/318). That includes the concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, based on their consideration of the periodic reports submitted by the States parties to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in respect of the implementation of the right to self-determination guaranteed in common article 1 of the two Covenants.

4. The report also incorporates the consideration of the question by the Human Rights Council, including observations made in reports submitted to the Council by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the Special Rapporteur on the rights of indigenous peoples. Finally, it summarizes the main observations relating to the right to self-determination made by the Secretary-General in his latest report to the Security Council concerning the situation in Western Sahara (S/2014/258).

II. Human Rights Committee and Committee on Economic, Social and Cultural Rights

5. Article 1, paragraph 1, of both the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights affirms the right of all peoples to self-determination. Article 1, paragraph 2, of the two Covenants affirms a particular aspect of the economic content of this right, namely the right of peoples, for their own ends, to "freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law." It further states that "in no case may a people be deprived of its own means of subsistence". Article 1, paragraph 3, of the two Covenants imposes upon States parties, including those having responsibility for the administration of non-self-governing and trust territories, the obligation to promote the realization of the right to self-determination and to respect it, in conformity with the provisions of the Charter of the United Nations, in particular with article 1, paragraph 2.

6. The right to self-determination has been addressed by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in their consideration of the periodic reports of States parties, submitted under article 40 of the International Covenant on Civil and Political Rights and articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. The relevant concluding observations adopted during the period under review are highlighted below.

A. Concluding observations by the Human Rights Committee

7. During the reporting period, at its 108th, 109th and 110th sessions, the Human Rights Committee addressed several issues related to the right to self-determination of indigenous peoples in the Plurinational State of Bolivia, Finland and the United States of America.

8. In its concluding observations on the report of the Plurinational State of Bolivia, the Committee welcomed the preliminary framework bill on consultation with indigenous peoples mentioned by the State party, but was concerned by information to the effect that, in relation to extractive projects, the preliminary bill provided only for consultation with the peoples affected, but not their free, prior and informed consent. The Committee was also concerned at reports of tensions in the Isiboro-Secure National Park and Indigenous Territory caused by a road-building project that did not have the support of all the communities concerned. The Committee recommended that the free, prior and informed consent of the indigenous communities be sought when decisions were to be taken concerning projects that had a bearing on their rights and that, in particular, all the indigenous communities concerned should take part in the consultation process and their views duly taken into account. The Committee also recommended that the State party ensure that the free, prior and informed consent of indigenous communities was obtained through representative institutions before any measures were adopted that would substantially jeopardize or interfere with culturally significant economic activities of those communities (CCPR/C/BOL/CO/3, para. 25).

9. In its concluding observations on Finland, the Committee expressed its concern that the Sami people lacked participation and decision-making powers over matters of fundamental importance to their culture and way of life, including rights to land and resources. The Committee advised Finland to advance the implementation of the rights of the Sami by strengthening the decision-making powers of Sami representative institutions, such as the Sami parliament and to increase its efforts to revise its legislation to guarantee fully the rights of the Sami people in their traditional land, ensuring respect for the right of Sami communities to engage in free, prior and informed participation in policy and development processes that affected them (CCPR/C/FIN/CO/6, para. 16).

10. In its concluding observations on the report of the United States of America, the Committee was concerned about the restriction of access of indigenous peoples to sacred areas that are essential for the preservation of their religious, cultural and spiritual practices and the insufficiency of consultation with indigenous peoples on matters of interest to their communities. The Committee asked the State party to adopt measures to effectively protect sacred areas of indigenous peoples and ensure that consultations were held with the indigenous communities that might be

adversely affected by the development projects of the State party and the exploitation of natural resources, with a view to obtaining their free, prior and informed consent for proposed project activities (CCPR/C/USA/CO/4, para. 25).

B. Concluding observations by the Committee on Economic, Social and Cultural Rights

11. During its fifty-first and fifty-second sessions, the Committee on Economic, Social and Cultural Rights addressed relevant aspects of the right to self-determination in its concluding observations on China, El Salvador, Gabon and Indonesia with respect to the rights of indigenous peoples.

12. In its concluding observations on the report of China, the Committee was concerned about the resettlements of nomadic herdsmen in the "new socialist villages" carried out in the State party without proper consultation and in most cases without the free, prior and informed consent of those concerned, particularly in the western provinces and autonomous regions. It urged China to take all necessary measures to immediately halt non-voluntary resettlements of nomadic herders from their traditional lands and non-voluntary relocation or rehousing programmes of other rural residents and recommended meaningful consultations with the affected communities in order to examine and evaluate all available options (E/C.12/CHN/CO/2, para. 31).

13. In its concluding observations on the report of El Salvador, the Committee welcomed the constitutional reform approved by the Congress which provided for legal recognition of indigenous peoples, but expressed concern at the lack of knowledge of the number of indigenous persons in the country. The Committee urged the Congress to ratify the constitutional reform and urged El Salvador to conduct a census of the indigenous population (E/C.12/SLV/CO/3-5, para. 7).

14. In its concluding observations on the report of Gabon, the Committee regretted the absence of a specific regulatory or legislative framework that would make it possible to systematize practice in implementing the right to prior informed consultation of indigenous peoples in decision-making processes concerning the exploitation of natural resources in traditional territories. It recommended that the State party ensure the effective and systematic application of the principle of prior consultation in discussions with indigenous peoples, providing the time and space necessary for reflection and decision-making and allowing free expression, as well as respecting their consent to the realization of a project (E/C.12/GAB/CO/1, para. 6).

15. In its concluding observations on Indonesia, the Committee expressed concern at the absence of an effective legal protection framework of the rights of the indigenous peoples (*Masyarakat Hukum Adat*), due to inconsistencies in relevant legislative provisions. It urged the State party to expedite the adoption of the draft law on the rights of the indigenous peoples, ensuring that it effectively guaranteed their inalienable right to own, develop, control and use their customary lands and resources and defined mechanisms for ensuring the respect of their free, prior and informed consent on decisions affecting them and their resources, as well as adequate compensation and effective remedies in case of violation (E/C.12/IDN/CO/1, para. 38).

III. Human Rights Council

A. Resolutions

16. At its twenty-fourth session, held from 9 to 27 September 2013, the Human Rights Council adopted resolution 24/13 on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Human Rights Council urged all States to take the necessary steps and exercise the utmost vigilance against the threat posed by the activities of mercenaries, and take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training, protection and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State or to dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right of peoples to self-determination.

17. At its twenty-fifth session, held from 3 to 28 March 2014, the Human Rights Council considered the question of the realization of the right of peoples to self-determination under agenda item 7 and adopted resolution 25/27 on the right of the Palestinian people to self-determination. The Council reaffirmed the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity, and to establish their sovereign, independent, democratic and viable contiguous State. The Council confirmed that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination and urged all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination.

B. Special procedures

18. In his report to the twenty-fifth session of the Human Rights Council, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 addressed the Israeli settlements in the West Bank, including East Jerusalem, and the wall in the context of the tenth anniversary of the advisory opinion of the International Court of Justice on the Legality of the Construction of a Wall in the Occupied Palestinian Territory. Regarding the advisory opinion, he stated that it was time to examine what legitimate action by the international community could be taken to achieve compliance with international law, as set out by the International Court of Justice, and called on the United Nations to take action that would seek to protect the rights of the Palestinian people bearing on the sanctity of their territory and its relation to the underlying right of self-determination (A/HRC/25/67, para. 21).

19. The Special Rapporteur further considered the policies and practices of Israel in occupied Palestine in the light of the international prohibition of ethnic discrimination, segregation and apartheid. He concluded that through prolonged occupation, with practices and policies which appear to constitute apartheid and

segregation, ongoing expansion of settlements and continual construction of the wall, arguably amounting to de facto annexation of parts of the occupied Palestinian territory, the denial by Israel of the right to self-determination of the Palestinian people is evident (ibid., para. 78).

20. The Special Rapporteur recommended that Palestinian legal rights, including the right of self-determination, be fully respected and implemented in attempts to reach a peaceful and just resolution of the conflict. He further recommended that the Human Rights Council appoint an expert group to propose a special protocol to the Fourth Geneva Convention with the specific purpose of proposing a legal regime for any occupation that lasts for more than five years (ibid., para. 81).

21. In his report to the twenty-fourth session of the Human Rights Council, the Special Rapporteur on the rights of indigenous peoples addressed the right of self-determination of indigenous peoples in the context of the extractive industries (A/HRC/24/41). He observed that the prevailing business model in most places for the extraction of natural resources within indigenous territories, in which an outside company with backing by the State, control and profits from the extractive operation, was not one that was fully conducive to the fulfilment of the rights of indigenous peoples, particularly their self-determination and proprietary and cultural rights in relation to the affected lands and resources (ibid., para. 4). He stated that new business models for the extraction of natural resources needed to be examined and developed, and added that in some cases indigenous peoples were establishing and implementing their own enterprises to extract and develop natural resources. He considered that the alternative of indigenous-controlled resource extraction, by its very nature, was more conducive to the exercise of the right of indigenous peoples to self-determination, lands and resources, culturally appropriate development and related rights, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other international sources of authority (ibid., para. 8).

22. The Special Rapporteur recalled that in the Declaration it states that "indigenous peoples have the right to determine priorities and strategies for the development or use of their lands and territories" (article 32, para. 1), as part of their right to self-determination. That right necessarily implies a right of indigenous peoples to pursue their own initiatives for resource extraction within their territories if they so choose. Nevertheless, according to the Special Rapporteur, even resource extraction by their own enterprises may pose certain risks to the enjoyment of human rights for the members of indigenous communities, particularly in relation to the natural environment. Experience showed, however, that those risks could be minimized and the enjoyment of self-determination and related rights enhanced, when indigenous peoples freely chose to develop their own resource extraction enterprises backed by adequate capacity and internal governance institutions (A/HRC/24/41, para. 11).

23. The Special Rapporteur further observed that, just as indigenous peoples had the right to pursue their own initiatives for resource extraction, as part of their right to self-determination and to set their own strategies for development, they also had the right to decline to pursue such initiatives in favour of other initiatives for their sustainable development, and they should be supported in such other pursuits as well (ibid., para. 82).

24. Finally, the Special Rapporteur recalled that the free, prior and informed consent of indigenous peoples was required, as a general rule, when extractive

activities were carried out within their territories and as a safeguard for their internationally recognized rights. Indigenous consent might also be required when extractive activities otherwise affected indigenous peoples, depending on the nature of the activities and their potential impact on the exercise of those rights (ibid., paras. 84 and 85).

IV. Security Council

The situation concerning Western Sahara

25. Further to Security Council resolution 2099 (2013), the Secretary-General provided a report to the Security Council on the situation in Western Sahara (S/2014/258). In the report he recalled recent developments in Western Sahara, where the situation during the reporting period remained generally calm. There were, however, some sporadic demonstrations aimed at drawing attention to human rights concerns, socioeconomic issues and political demands, including the right to self-determination.

26. In the report reference was made to violations of civil and political rights, and it was noted that the United Nations continued to receive communications alleging abuses of such rights in Western Sahara, west of the berm, as well as in the refugee camps, particularly in the form of restrictions on freedoms (ibid., paras. 78 and 83). Also mentioned were existing concerns about the exploitation of natural resources in the part of the territory under Moroccan control and in the territorial waters adjacent to Western Sahara (ibid., paras. 11 and 12). In this regard, it was stated in the report that it would be timely to call upon all relevant actors to recognize the principle that the interests of the inhabitants of these territories are paramount, in accordance with article 73 of the Charter of the United Nations (ibid., para. 97).

27. The report also included an account of the activities of the Personal Envoy of the Secretary-General for Western Sahara, who had decided to engage in bilateral consultations with the parties and neighbouring States in 2013, to gauge whether the parties were prepared to be flexible in developing the elements of a compromise solution and how the neighbouring States could be of assistance. In this regard, the Personal Envoy of the Secretary-General had undertaken three rounds of consultations with the parties and neighbouring States, during which he made clear that discussions would have to address the substance of a mutually acceptable political solution and the means by which the people of Western Sahara would exercise self-determination.

28. During the period from November 2013 to March 2014, the Personal Envoy of the Secretary-General initiated a new series of consultations with members of the Group of Friends of Western Sahara, visiting successively Washington, D.C., Paris and Madrid. In those consultations, he sought the renewed support of interlocutors for his new approach and for his emphasis on the need for the parties to address both the substance of a mutually acceptable political solution and the means of exercising self-determination, for which interlocutors in all three capitals expressed their support. He also requested that the members of the Group join him in impressing upon the parties the need for flexibility in the search for a compromise.

29. In the conclusions of his report, the Secretary-General called upon the parties to recognize the need for urgent progress and to engage seriously on the two core

issues under the guidance of the Security Council: the content of a political solution and the form of self-determination. He further asked that the international community, and in particular the neighbouring States and the members of the Group of Friends, provide support for this endeavour. He added that, should no progress occur before April 2015, the time would have come to engage the members of the Security Council in a review of the framework that it had provided for the negotiating process in April 2007 (ibid., para. 94).

30. Having considered the report of the Secretary-General on the situation concerning Western Sahara, the Security Council adopted resolution 2152 (2014). In the resolution, the Council called upon the parties to continue negotiations under the auspices of the Secretary-General without preconditions and in good faith, taking into account the efforts made since 2006 and subsequent developments, with a view to achieving a just, lasting, and mutually acceptable political solution, which would provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter. The Council also noted the role and responsibilities of the parties in that respect.

V. Conclusion

31. **The right of self-determination is enshrined in article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. During the reporting period, the human rights treaty bodies, the Human Rights Council, including special procedures mandate holders, and the Security Council have continued to address issues related to the realization of that right.**